A

# FADIL BACHOK

**v.**

**PP**

B

COURT OF APPEAL, PUTRAJAYA
MALIK ISHAK JCA
CLEMENT SKINNER JCA
AZAHAR MOHAMED JCA
[CRIMINAL APPEAL NO: J-05-48-2011
C 20 SEPTEMBER 2012

***CRIMINAL LAW:*** *Dangerous Drugs Act 1952, s. 39B(2) - Trafficking in 744 grams cannabis - Accused threw package containing drugs from window - Whether accused had knowledge about drugs -*
D *Whether trial judge erred in his decision for convicting accused - Whether trial judge judicially appreciated evidence of witnesses - Whether evidence from those related to accused carefully scrutinised - Whether accused had custody and control of drugs - Whether appellate interference required - Whether decision of trial court affirmed*

E

The accused ('appellant') was charged for trafficking in 744 grams of cannabis, an offence under s. 39B(2) of the Dangerous Drugs Act 1952 ('DDA'). On 9 September 2009, Inspector Zulkifli ('PW3') together with his police party conducted a search in
F DW2's house whereby some firecrackers were found in DW2's room. Thereafter, PW3 and his party proceeded to another room but it was found to be locked. After knocking the door several times, the appellant, who was DW2's brother, opened it and upon entering the lighted room, PW3 observed a woman, who was later identified as the appellant's wife ('PW5'), sleeping. Suddenly, L/Cpl
G Fauzi ('PW2') who took his position outside the house informed PW3 through the window of the room that he saw a man throwing a package from the same window. Upon inspecting the package, PW3 found a transparent plastic package containing a
H compressed slab, which was later confirmed to be cannabis. During his defence, the appellant submitted that, (i) he did not have any knowledge about the drugs; (ii) he did not throw the drugs from the window; and (iii) before the police came, he was sleeping and was eventually arrested as soon as he opened the
I door. At the conclusion of the trial, the learned Judicial Commissioner ('JC') found that the prosecution had proved its

case beyond reasonable doubt and the appellant failed to rebut the presumption of trafficking under s. 37(da)(vi) of the DDA. With that, the appellant was convicted and sentenced to the mandatory death penalty. Dissatisfied with the said decision, the appellant appealed to this court. The grounds raised by the appellant were that the learned JC erred when he: (i) failed to realise that possession had not been proved; and (ii) failed to appreciate the defence case. In line with these grounds, the appellant argued *inter alia*, that (i) PW2 and PW3 were not credible witnesses; (ii) PW5's evidence did not support the prosecution's case; and (iii) PW3's police report ('exh. D13') which stated that he saw the appellant throwing the package contradicted his oral evidence.

**Held (dismissing appeal; affirming decision of High Court)**
**Per Azahar Mohamed JCA delivering the judgment of the court:**

**(1)** The learned JC never commented on the various parts of PW2's evidence. One of the tests for accepting or rejecting a witness's evidence is how far it fits in with the rest of the evidence and the circumstances of the case. It was a striking uncontroverted fact that prior to PW3 and his party entering the room, there were only two persons in it, *ie*, PW5 and the appellant. Moreover, PW5 was sleeping when PW3 entered the room. The JC's failure to direct himself on the various parts of PW2's evidence had not occasioned a substantial miscarriage of justice. Having regard to the surrounding and prevailing circumstances of this case, even if the JC were to direct himself on the various parts of PW2's evidence, he would have come to the same inescapable and irresistible conclusion that it was the appellant who threw the drugs from the window. (paras 13 & 14)

**(2)** The police report was not an encyclopedia. It was not the beginning and the end of every case. Moreover, exh. D13 must be scrutinised correctly in its entirety. Nowhere did exh. D13 expressly state that PW3 saw the appellant who threw the package, but most significantly, it was unambiguously stated in exh. D13 that it was PW2 who in fact saw the appellant threw the package. (para 15)

**(3)** As regards to PW5's evidence, a reading of the learned JC's judgment unmistakably showed that he had judicially appreciated the evidence of this witness. It was not correct to say that the JC failed to carry out a maximum evaluation of PW5's evidence. Hence, there was no merit in this argument. (paras 16 & 17)

**(4)** The learned JC who was required to adjudicate upon a dispute on an issue of fact must arrive at his decision by appreciating and evaluating all the evidence placed before him. In this regards, the JC had made a finding in his judgment that the evidence of PW5 and DW2 must be carefully considered and scrutinised since both were related to the appellant. Further, the JC was correct in accepting some parts of these witnesses' evidence while rejecting others which he felt was not credible enough. Hence, there had been no misdirection by the JC in this finding of fact. (paras 19 & 20)

**(5)** The learned JC had carefully analysed the defence advanced by the appellant and had given due consideration to the critical issue. It had not been shown that the JC's findings were against the weight of evidence or perverse in any way. Thus, there were no serious errors in the judgment warranting appellate interference. (para 21)

**(6)** The learned JC was correct in deciding that based on the facts, the appellant had custody and control of the cannabis by the act of throwing it. The proper and only irresistible inference to be drawn must be that the appellant knew that the transparent plastic package contained the said cannabis. This court agreed with the JC and his finding was correct and consistent with the evidence placed before him. (para 22)

***Bahasa Malaysia*** *Translation Of Headnotes*

Tertuduh ('perayu') dituduh mengedar 744 gram kanabis, suatu kesalahan di bawah s. 39B(2) Akta Dadah Berbahaya 1952 ('ADB'). Pada 9 September 2009, Inspektor Zulkifli ('PW3') bersama-sama dengan sepasukan polis telah menjalankan pemeriksaan di rumah DW2 di mana beberapa mercun api telah dijumpai di dalam bilik DW2. Kemudian, PW3 dan pasukannya telah ke sebuah bilik lain tetapi bilik tersebut didapati berkunci. Selepas mengetuk pintu beberapa kali, perayu, yang merupakan

saudara lelaki DW2 telah membukanya dan selepas memasuki bilik yang berlampu tersebut, PW3 melihat seorang perempuan, yang kemudiannya dikenali sebagai isteri perayu ('PW5'), sedang tidur. Tiba-tiba, L/Kpl Fauzi ('PW2') yang berada di luar rumah memaklumkan PW3 melalui tingkap bilik itu bahawa dia telah melihat seorang lelaki membuang satu bungkusan dari tingkap tersebut. Atas pemeriksaan bungkusan tersebut, PW3 menjumpai satu plastik lutsinar mengandungi sekeping mampat yang kemudiannya disahkan sebagai kanabis. Semasa pembelaan, perayu menghujahkan bahawa: (i) dia tidak mempunyai pengetahuan berkenaan dadah itu; (ii) dia tidak membuang dadah itu dari tingkap; dan (iii) sebelum kedatangan polis, dia sedang tidur dan telah ditangkap apabila pintu dibuka olehnya. Pada akhir perbicaraan, yang arif Pesuruhjaya Kehakiman ('PK') mendapati bahawa pihak pendakwaan telah membuktikan kesnya melampaui keraguan munasabah manakala perayu gagal mematahkan anggapan pengedaran di bawah s. 37(da)(vi) ADB. Dengan itu, perayu telah disabit dan dihukum mati. Tidak berpuas hati dengan keputusan tersebut, perayu merayu ke mahkamah ini. Alasan yang dibangkitkan oleh perayu adalah bahawa Yang Arif PK khilaf apabila beliau: (i) gagal menyedari bahawa pemilikan tidak dibuktikan; dan (ii) gagal menilai kes pembelaan. Berdasarkan alasan-alasan ini, perayu menghujahkan, antara lain, bahawa (i) PW2 dan PW3 bukanlah saksi-saksi yang boleh dipercayai; (ii) keterangan PW5 tidak menyokong kes pendakwaan; dan (iii) laporan polis PW3 ('exh D13') yang menyatakan bahawa dia melihat perayu membuang bungkusan itu bercanggah dengan keterangan lisannya.

**Diputuskan (menolak rayuan; mengesahkan keputusan Mahkamah Tinggi)**

**Oleh Azahar Mohamed HMR menyampaikan penghakiman mahkamah:**

**(1)** Yang arif PK tidak memberi ulasan berkenaan beberapa bahagian daripada keterangan PW2. Salah satu ujian untuk membenarkan atau menolak keterangan saksi adalah berdasarkan kesesuaiannya dengan keterangan lain dan keadaan kes. Ianya adalah suatu fakta yang tidak boleh dipertikaikan bahawa sebelum PW3 dan pasukannya memasuki bilik tersebut, hanya terdapat dua orang di dalamnya, iaitu, PW5 dan perayu. Tambahan, PW5 sedang tidur apabila PW3 memasuki bilik itu. Oleh itu, kegagalan PK untuk mengarah

A dirinya terhadap beberapa bahagian keterangan PW2 tidak menyebabkan ketidakadilan substansial. Mengambil kira keadaan persekitaran kes ini, walaupun PK telah mengarahkan dirinya terhadap beberapa bahagian keterangan PW2, beliau masih akan mencapai kesimpulan yang tidak dapat disangkal
B bahawa perayulah yang telah membuang dadah tersebut dari tingkap.

**(2)** Laporan polis bukanlah suatu ensaiklopedia. Ianya bukan permulaan dan pengakhiran setiap kes. Tambahan lagi,
C eks. D13 mestilah diteliti secara keseluruhannya. Tiada mana-mana dinyatakan dalam eks. D13 bahawa PW3 melihat perayu yang membuang bungkusan, tetapi jelas dinyatakan tanpa sebarang kekaburan dalam eks. D13 bahawa ianya adalah PW2 yang sebenarnya melihat perayu membuang bungkusan
D itu.

**(3)** Berkenaan keterangan PW5, suatu bacaan penghakiman Yang Arif PK menunjukkan bahawa beliau telah menilai keterangan saksi ini dari sisi undang-undang. Ianya tidak betul untuk menyatakan bahawa PK gagal untuk menjalankan suatu
E penilaian maksima terhadap keterangan PW5. Oleh itu, tiada merit dalam hujahan ini.

**(4)** Yang Arif PK yang dikehendaki memberi penghakiman atas suatu pertikaian fakta mestilah mencapai keputusannya dengan
F mengambil kira dan menilai semua keterangan di hadapannya. Dalam keadaan ini, PK membuat dapatan dalam keputusannya bahawa keterangan PW5 dan DW2 mestilah dipertimbangkan secara berhati-hati memandangkan mereka mempunyai hubungan dengan perayu. Tambahan, PK betul dalam
G menerima beberapa bahagian keterangan saksi-saksi ini sambil menolak yang lain di mana beliau rasa tidak boleh dipercayai. Oleh itu, tiada salah arah oleh PK dalam dapatan fakta ini.

**(5)** Yang Arif PK telah dengan berhati-hati menganalisa pembelaan
H yang dibuat oleh perayu dan memberi pertimbangan terhadap isu kritikal. Tidak ditunjukkan bahawa dapatan PK bercanggah dengan berat keterangan atau pun bertentangan dalam apa jua cara. Oleh itu, tiada kesilapan serius dalam penghakiman yang mewajarkan campur tangan rayuan.

I

**(6)** Yang Arif PK betul dalam memutuskan bahawa berdasarkan fakta, perayu mempunyai milikan dan jagaan kanabis melalui aksi membuangnya. Anggapan berpatutan untuk dibuat adalah bahawa perayu mempunyai pengetahuan bahawa bungkusan plastik lutsinar itu mengandungi kanabis tersebut. Mahkamah ini bersetuju dengan PK dan dapatannya adalah betul dan konsisten dengan keterangan di hadapan beliau.

**Case(s) referred to:**
*Herchun Singh & Ors v. PP [1969] 1 LNS 52 FC* ***(refd)***
*Balachandran v. PP [2005] 1 CLJ 85 FC* ***(refd)***
*Lim Guan Eng v. PP & Other Appeal [1998] 3 CLJ 769 CA* ***(refd)***

**Legislation referred to:**
Dangerous Drugs Act 1952, ss. 39B(2), 37(da)(vi)

*For the appellant - Hisham Teh Poh Teik; M/s Teh Poh Teik & Co*
*For the respondent - Farah Ezlin Yusop Khan; DPP*

*[Appeal from High Court, Johor Bahru; Criminal Trial No: MT3-45A-05-2010]*

*Reported by Kumitha Abd Majid*

## JUDGMENT

**Azahar Mohamed JCA:**

**[1]** Fadil bin Bachok ("the appellant") was charged and tried before the Johor Bahru High Court for trafficking in 744g of dangerous drugs, namely cannabis, an offence under s. 39B(2) of the Dangerous Drugs Act 1952 (DDA), and punishable under s. 39B(2) of the DDA. The offence was said to have been committed on 9 September 2009 at about 2.40 am at a house in Pekan Nenas, in the district of Pontian in the State of Johor Darul Ta'zim.

**[2]** The learned Judicial Commissioner ("JC") at the conclusion of the trial convicted the appellant and sentenced him to mandatory death penalty prescribed by the DDA. Aggrieved by that decision, the appellant then appealed to this court. We heard his appeal, wherein at its conclusion we unanimously dismissed it. We affirmed the conviction and sentence. We now give our reasons for so deciding.

**[3]** The salient facts adduced by the prosecution at the trial in the High Court are these. On 9 September 2009 Insp. Zulkifli bin Yahya ("PW3") and a police party comprising of five members from the Crime Division of Pontian Police District were on duty for the 'Operasi Pencegah Jenayah' at Pekan Nenas. At about 2.15am, PW3 and his party arrested Imran bin Bachok ("DW2"). After questioning, DW2 told PW3 that he kept some firecrackers at his house. PW3 and his party then brought DW2 to his house. They arrived there at about 2.30am. Upon arrival, PW3 instructed L/Kpl Fauzi bin Norinah ("PW2") to guard outside the house. PW2 together with L/Kpl Saiful Bahari then took up positions outside the house in order to keep the area under surveillance. After that, PW3 and his party gained access into the said house when an elderly woman, later identified as DW2's mother, opened the front door to the said house upon PW3 knocking at the door. PW3 identified himself as a police officer and showed her his authority card.

**[4]** DW2 then guided PW3 and his party to his room and recovered some firecrackers from the said room. Next, they went to another room to conduct another search but found that room was locked. PW3 knocked at the door since it was locked. The room was subsequently opened by a Malay male, later identified as the appellant, after the door was knocked several times by PW3. The room was lighted. As he entered the room, PW3 noticed the appellant was "gelisah". Other than the appellant, there was a woman in the room, who was sleeping at the time PW3 entered the room. She was later identified as Saniasa binti Abdullah ("PW5"), the appellant's wife. And at that material time, PW2 who took his position outside the house spoke to PW3 through the window to the room, informing PW3 that he saw a man throwing a package from the same window. PW3 then instructed PW2 to bring the package into the house. After receiving the package, PW3 then inspected it, witnessed by the appellant. PW3 found out that inside the transparent plastic package was a compressed slab. PW3 then seized the compressed slab and brought both the appellant and DW2 back to the police station. The compressed slab was later confirmed by the chemist, Norashidah binti Omar ("PW4") to be cannabis, weighing 744g.

**[5]** On the basis of the evidence that we have discussed beforehand, after the conclusion of the case for the prosecution, the learned JC came to the finding that the prosecution had made

out a *prima facie* case against the appellant and therefore called upon the appellant to enter on his defence in respect of the offence charged. The learned JC made a finding that the appellant was in possession of the cannabis in question and as the weight of the cannabis was over 200g, he invoked the presumption under s. 37(da)(vi) of the DDA to presume that the appellant was trafficking in the cannabis.

**[6]** The appellant elected to give evidence on oath and called his brother, DW2 as his witness. The appellant's defence was very simple and quite straightforward and can be summarized as follows. He did not have any knowledge about the drugs and neither did he throw the drugs from the window. This is the core of the appellant's defence. Before the police came he was sleeping. He was arrested as soon as he opened the door.

**[7]** At the conclusion of the trial, the learned JC found that the prosecution had proved its case beyond reasonable doubt against the appellant and the appellant failed to rebut the presumption of trafficking under s. 37(da)(vi) of the DDA on the balance of probabilities. As stated earlier, the appellant was convicted of the offence and sentenced accordingly.

**[8]** Before us, the appellant raised two principal grounds in support of his appeal. We shall deal with each of them in turn.

**First Ground: Possession had not been Proven**

**[9]** On this issue, learned counsel for the appellant argued that the learned JC erred when he failed to realise that possession had not been proven and as such the prosecution had not made out a *prima facie* case against the appellant; the learned JC should have recorded an order of acquittal at the conclusion of the case for the prosecution. The arguments by learned counsel here were two pronged. First and foremost, it was argued that both the key prosecution's witnesses, namely PW2 and PW3 are not credible. According to learned counsel, the learned JC erred when he accepted the evidence of these witnesses at face value without subjecting it to a test of maximum evaluation. Secondly, it was argued that the evidence of PW5 did not support the prosecution's case.

**[10]** Learned counsel then took us through the evidence of PW2 led at the trial. In particular, he brought to our attention the following parts of the evidence of PW2:

(1) Pg. 12 of the Appeal Record

S : Pada jam 2.40 pagi macam mana lihat?

J : Satu lelaki Melayu membuka tingkap dan mencampakkan benda yang di balut dengan plastik.

(2) Pg. 14 of the Appeal Record

S : Nampak siapa buang benda di luar tingkap?

J : Tak nampak.

(3) Pg. 15 of the Appeal Record

S : Kalau terang macam mana tak nampak orang yang membuangnya?

J : Cuma nampak tangan.

**[11]** Learned counsel then argued that after the lunch break PW2 changed his evidence as can be seen at pg. 17 of the Appeal Record:

S : Macam mana tak lihat orang buang?

J : Saya dapat lihat sebab bilik terang. OKT dicam sebagai orang membuang bungkusan melalui tingkap.

S : Kenapa nampak pula sekarang

J : Pagi tadi saya tak faham soalan.

**[12]** In considering this matter, we had closely scrutinised the judgment of the learned JC. In his judgment, the learned JC made specific findings concerning the evidence of PW2 in relation to the evidence of the appellant throwing from the window a package containing the offending drugs. In this context, the learned JC had this to say in his judgment:

> Antara fakta yang dikemukakan untuk membuktikan elemen ini ialah keterangan SP2 yang mana beliau menyatakan diarah oleh SP3 untuk mengawal depan rumah bersama L/Kpl. Saiful. Semasa SP2 berada di hadapan rumah itu dalam jarak lebih kurang 1 meter beliau nampak satu lelaki Melayu telah membuka tingkap

> 'nako' dan mencampakkan keluar benda yang dibalut dengan plastik. Mengikut SP2 pencahayaan dalam bilik di mana bungkusan tersebut dibuang melalui tingkap adalah terang dek lampu dalam bilik hadapan itu. SP2 mengecam tingkap bilik tersebut dan menandakan 'X' pada bahagian hadapan tingkap di dalam ekshibit gambar P6(b). Seterusnya SP2 mengesahkan P12 dan P15 sebagai ketulan yang dibuang melalui tingkap 'nako' dan juga mengecamnya melalui eksibit gambar P6(q) dan P6(r). Pada malam kejadian itu SP2 sempat melihat siapa yang membuang bungkusan tersebut dan semasa perbicaraan mengecam OKT sebagai orang yang berkenaan itu.

**[13]** It is true that when dealing with this issue, as submitted by learned counsel, the learned JC never commented on the various parts of the evidence of PW2 as mentioned above. What then is the effect? In this regard, it is a striking uncontroverted fact that prior to PW3 and his party entering the room there were only two persons in the said room, namely PW5 and the appellant. More than that, there is another point which is essential to remember here. PW5 was sleeping when PW3 entered the room. In relation to this, the learned JC made the following pertinent observation in his judgment:

> SP3 pula dalam keterangannya menyokong SP2 dengan menyatakan selepas dua atau tiga kali beliau mengetuk pintu bilik hadapan bertanda X dalam P9 rumah berkenaan itu barulah OKT membuka pintu bilik itu dan pada masa itu mendapati isterinya SP5 masih sedang tidur dan lalu terjaga kemudiannya dan langsung diarahkan keluar dari bilik tersebut. Jadi dalam tempoh sebelum OKT membuka pintu bilik tersebut apa yang dilakukan oleh OKT di dalamnya sudah semestinya tanpa pengetahuan SP5 sebab beliau masih tidur.

**[14]** Coming back then to the argument of learned counsel, in the context of the present case, the failure of the learned JC to direct himself on the various parts of the evidence of PW2, in our opinion, has not occasioned a substantial miscarriage of justice. In our judgment, having regard to the surrounding and prevailing circumstances of this case, even if the learned JC were to direct himself to the various parts of the evidence of PW2 he would have come to the same inescapable and irresistible conclusion that it was the appellant who threw the drugs from the window. One of the tests for accepting or rejecting the evidence of a witness is

how far it fits in with the rest of the evidence and the circumstances of the case. In our judgment, the evidence of PW2 that he saw the appellant throw the cannabis fits in with the other evidence in that there were only two persons in the room, namely PW5 and the appellant, and that PW5 was sleeping at the material time. That's why we are constrained to say that the challenge mounted by the appellant against the credibility of PW2 is baseless.

**[15]** Next, it was argued by learned counsel that the evidence of PW3 did not inspire confidence as his oral testimony contradicted his police report ("exh. D13"). It was argued that in his police report, PW3 said he saw the appellant throwing the package. However, he contradicted himself and said otherwise in his oral evidence. Learned counsel then argued that had the learned JC assessed the evidence of PW3 by taking these inconsistencies he would have found that PW3 is not credible. We do not agree with this submission. In the first place, as submitted by the learned Deputy Public Prosecutor, the police report is not an encyclopedia. It is not the beginning and ending of every case (see: *Herchun Singh & Ors v. PP* [1969] 1 LNS 52 and *Balachandran v. PP* [2005] 1 CLJ 85). Moreover, exh. D13 must be scrutinised properly and correctly in its entirety. Nowhere does exh. D13 clearly and expressly state that PW3 in point of fact saw the appellant threw the package. But most significantly, in exh. D13 it is unambiguously stated that it was PW2 who in fact saw the appellant threw the package.

**[16]** As regards to the evidence of PW5, a reading of the judgment of the learned JC unmistakably shows that he has judicially appreciated the evidence of this witness. In his judgment, this is how the learned JC assessed and weighed the evidence of PW5:

> SP5 isteri OKT merupakan 'interested witness' dan mahkamah perlu berhati-hati dengan keterangannya tapi sungguhpun demikian beliau tidak menafikan cuma OKT dan dirinya mendiami bilik bertanda 'X' dalam P9 rumah berkenaan. SP5 juga menyatakan semasa anggota polis mengetuk pintu bilik beliau masih tidur dan sebaik sahaja SP3 menyerbu masuk beliau diminta keluar dari bilik tersebut. SP5 mengesahkan memang ada lampu tidur dalam bilik itu. Beliau tidak mempunyai apa-apa pengetahuan mengenai dadah P12 dan P15.

**[17]** In view of that, it is not correct to say that the learned JC failed to carry out a maximum evaluation of the evidence of PW5. We will have much more to say concerning PW5 when we turn to deal with the second principle ground raised by the appellant in this appeal. We therefore find no merit in the arguments of learned counsel under this head of complaint.

**Second Ground: the Learned JC Erred when he Failed to Appreciate the Defence Case**

**[18]** As stated earlier, the appellant's core defence was that he did not have any knowledge about the cannabis and neither did he throw the drugs from the window. This, learned counsel contended, is supported by the evidence of the prosecution and the defence on material aspects, particularly that of PW5 and DW2. Learned counsel argued that by the evidence of PW5 the room was only illuminated by a table lamp and that the package was not in the room before PW3 and his men came. He argued that this aspect of the defence had not received any sufficient attention from the learned JC. Learned counsel argued that the appellant's defence was reasonable and probable and capable of raising a reasonable doubt.

**[19]** We are of the view that the complaint raised by learned counsel really turns upon a question of fact based upon the credibility of PW5 and DW2. The learned JC who is required to adjudicate upon a dispute on an issue of fact must arrive at his decision by appreciating and evaluating all the evidence placed before him. In this regard, the learned JC has made a finding in his judgment that the evidence of PW5 and DW2 must be carefully considered and scrutinised for the obvious reason that they are both related to the appellant. In the words of the learned JC in his judgment:

> Kedua-dua SD2 dan SP5 adalah merupakan saksi berkepentingan ('interested witness') kerana mereka adalah adik dan isteri OKT masing-masingnya. Maka oleh itu mahkamah amat berhati-hati dengan keterangan mereka kerana sudah pasti sebagai adik dan isteri OKT akan cuba memberi keterangan yang berpihak kepada abang dan suami mereka masing-masing. Tetapi pada keseluruhannya keterangan SP5 tidak menggugat kes pendakwaan dan sekiranya ada perbezaan pun ianya adalah kecil dan telah pun diperjelaskan sebentar tadi berdasarkan keterangan SP3 dan SP2. Begitu juga keterangan SD2 tidak langsung menggugat kes

A pendakwaan kerana sepertimana yang telah diperjelaskan terdahulu tadi peranan beliau di tempat dan masa kejadian tamat apabila mercun dijumpai di dalam bilik beliau bertanda 'D' dalam rajah kasar (P9) dan apa-apa keterangan lain oleh beliau untuk menyokong OKT adalah rekaan semata-mata.

B **[20]** In our judgment, this direction is along the approach indicated in the case of *Lim Guan Eng v. PP & Other Appeal* [1998] 3 CLJ 769 which was referred to by the learned Deputy Public Prosecutor in her submissions. Furthermore, the learned JC went on to clarify why he was not bound to accept each and C every word of PW5 and DW2 in their evidence. On the facts of the present case, the learned JC was entitled and correct in accepting some parts of the evidence of these witnesses while rejecting others which he felt is not credible enough. We are of the view that there has been no misdirection by the learned JC in D this finding of fact.

**[21]** It is ostensibly clear from a reading of the judgment of the learned JC that he had critically appraised the defence that the appellant did not have any knowledge about the cannabis. It is for E this reason, we do not accept the contention of learned counsel that the learned JC failed to judicially appreciate the defence of the appellant. Indeed, the learned JC has analysed carefully the defence advanced by the appellant and has given due consideration to the critical issue. It has not been shown that the F findings of the learned JC is against the weight of evidence or perverse in any way. The judgment of the learned JC does not contain any serious error warranting appellate interference.

**[22]** The learned JC found that both PW2 and PW3 had given G credible evidence. At all material times, PW2 was standing outside the house, about one meter from the window. From the said window of the room he saw the appellant threw a package. There was only the appellant and PW5 in the room. As PW3 entered the room after the appellant opened the door, the appellant was H looking "gelisah". PW5 was asleep at that point of time. It was at this juncture that PW2 informed PW3 through the window that he saw the appellant threw a package containing the cannabis in question. We find no error in the learned JC's acceptance of their evidence. The learned JC was entitled and correct in deciding that I based on these facts, the appellant had custody and control of the cannabis by the act of throwing it. The proper and only irresistible

inference to be drawn from the facts and circumstances of this case must be that the appellant knew the transparent plastic package contained the said cannabis. We agree with the learned JC. We would decide likewise. We are unanimous that this finding was correct and consistent with the evidence placed before the learned JC. There are no compelling grounds at all to warrant appellate intervention.

**[23]** We find the conviction of the appellant safe. For reasons aforesaid, we dismiss this appeal and we uphold the conviction and sentence imposed by the learned JC.